Supreme Court, U.S.
FILED
OCT 17 2005
OFFICE OF THE CLERK

No. 05- 05-514

IN THE

Supreme Court of the United States

MARTIN HORN,

Petitioner,

v.

RICHARD LAIRD,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

DIANE E. GIBBONS*
Bucks County District Attorney
Commonwealth of Pennsylvania
STEPHEN B. HARRIS
Chief of Appeals
Office of the District Attorney
Bucks County Courthouse
Fourth Floor
55 East Court Street
Doylestown, PA 18901
(215) 348-6344

* *Counsel of Record* *Counsel for Petitioner*

197192

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

FORMER CAPITAL CASE

QUESTION PRESENTED

Whether the ailing accomplice liability instruction by itself so infected the entire trial that the resulting conviction violated constitutional due process when considered in the context of the jury instructions as a whole and the trial record, including the evidence presented and arguments made by the prosecutor.

PARTIES TO THE PROCEEDING

The petitioner is Martin Horn, in his official capacity as Commissioner, Pennsylvania Department of Corrections; Gregory White, Superintendent of the State Correctional Institution at Pittsburgh; and Joseph Mazurkiewicz, Superintendent of the State Correctional Institution at Rockview, Pennsylvania. Respondent Richard Laird is a state prisoner.

TABLE OF CONTENTS

	Page
Question Presented	i
Parties to the Proceeding	ii
Table of Contents	iii
Table of Authorities	iv
Table of Appendices	vii
Opinions Below	1
Statement of Jurisdiction	1
Constitutional and Statutory Provisions Involved	1
Statement of the Case	1
Reasons for Granting the Petition	14
I. Respondent Laird's judgment of conviction was not in violation of the Due Process Clause of the Fourteenth Amendment where the jury responded to the culmination of evidence presented at trial, the Commonwealth's arguments to the jury and the jury instructions as a whole, by convicting Laird and his co-conspirator on all charges and recommended a sentence of death for the conviction of first degree murder.	14
Conclusion	27

TABLE OF CITED AUTHORITIES

Page

Cases:

Alamo v. Frank, No. 97-3022, 1999 U.S. Dist. Lexis 274 (E.D. Pa. January 13, 1999) 18

Apel v. Horn, 250 F.3d 203 (3d Cir. 2001) 15

Arce v. Henderson, 477 F. Supp. 71 (S.D.N.Y. 1979) 26

Arizona v. Fulminante, 499 U.S. 279 (1991) 22

Boyde v. California, 494 U.S. 370, 110 S. Ct. 1190, 108 L. Ed. 2d 216 (1990) 16, 24

Bronshtein v. Horn, 404 F.3d 700 (3d Cir. 2005) ... 20, 21

Bronshtein v. Horn, No. 99-2186, U.S. Dist. LEXIS 12190 (E.D. Pa. July 5, 2001) 20

Burroughs v. Domovich, No. 99-1746, 2000 U.S. Dist. LEXIS 718 (E.D. Pa. January 31, 2000) 20

California v. Roy, 519 U.S. 2, 136 L. Ed. 2d 266, 117 S. Ct. 337 (1996) 23

Carella v. California, 491 U.S. 263 (1989) 18

Commonwealth v. Bachert, 453 A.2d 931 (Pa. 1982) 18

Commonwealth v. Laird, 587 A.2d 1367 (Pa. Super. 1991) 3

Cited Authorities

Page

Commonwealth v. Laird, 726 A.2d 346 (Pa. 1999) ... 3

Commonwealth v.Huffman, 638 A.2d 961 (Pa. 1996) 18, 19

Cupp v. Naughten, 414 U.S. 141, 38 L. Ed. 2d 368, 94 S. Ct. 396 (1973) 15, 16, 23, 26

Estelle v. McGuire, 502 U.S. 62 (1991) 16

Francis v. Franklin, 471 U.S. 307 (1985) 17

Henderson v. Kibbe, 431 U.S. 145 (1977) 16

Kontakis v. Beyer, 19 F.3d 110 (3d Cir. 1994) 22

Kotteakos v. United States, 328 U.S. 750 (1946) ... 22, 23

Laird v. Horn, 159 F. Supp. 2d 58 (E.D. Pa. 2001) . 1, 21

Laird v. Horn, 414 F.3d 419 (3d Cir. Pa. 2005) 1

Lambert v. Blackwell, No. 01-CV-2511, 2003 U.S. Dist. LEXIS 5125 (E.D. Pa. April 1, 2003) 22

Matteo v. Superintendent, SCI Albion, 171 F.3d 877 (3d Cir. 1999) 15

Paprocki v. Foltz, 869 F.2d 281 (6th Cir. 1989) 26

Rogers v. Carver, 833 F.2d 379 (1st Cir. 1987) 26

Ruffin v. Zant, 591 F. Supp. 1136 (D. Ga. 1984) ... 26

Cited Authorities

	Page
Sandstrom v. Montana, 442 U.S. 510 (1979)	17
Shannon v. Manson, 596 F. Supp. 558 (D. Conn. 1984)	26
Smith v. Horn, 120 F.3d 400 (3d Cir. 1997)	16
Sumner v. Mata, 449 U.S. 539 (1981)	16
United States v. Pine, 609 F.2d 106 (3d Cir. 1979)	26
Statutes:	
18 Pa. C.S. § 2702	2
18 Pa. C.S. § 2901	1, 2
18 Pa. C.S. § 2903	2
18 Pa. C.S. § 903	2
18 Pa. C.S. § 907	2
18 Pa. C.S. § 2502	1, 18, 20, 23
28 U.S.C. § 2254	1, 15

TABLE OF APPENDICES

Page

Appendix A — Opinion Of The United States Court Of Appeals For The Third Circuit Filed July 19, 2005 ..... 1a

Appendix B — Memorandum And Order Of The United States District Court For The Eastern District Of Pennsylvania Dated September 5, 2001 ..... 24a

Appendix C — Transcript Of Proceedings Dated May 20, 1986 ..... 177a

OPINIONS BELOW

The opinion of the Court of Appeals is reported at *Laird v. Horn*, 414 F.3d 419 (3d Cir. Pa. 2005), and is reprinted in the attached Appendix. The decision of the District Court is reported at, *Laird v. Horn*, 159 F. Supp. 2d 58 (E.D. Pa. 2001) and is reprinted in the attached Appendix.[1]

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on July 19, 2005. This petition is being filed within ninety days thereafter. This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Due Process Clause of the Fourteenth Amendment to the United States Constitution provides nor shall any State deprive ant person of life, liberty, or property without due process of law.

First Degree Murder, as defined under the Pennsylvania Crimes Code, 18 Pa.C.S. § 2502(a).[2]

STATEMENT OF THE CASE

This case involves an appeal by the Commonwealth of Pennsylvania to an action in *habeas corpus* filed pursuant to 28 U.S.C. § 2254, by a Pennsylvania prisoner, Richard Laird, sentenced to death for first-degree murder, 18 Pa.C.S. § 2502(a), in the killing of Anthony Milano. In the same proceeding, Laird was also convicted of these related crimes under Title 18 of the Pennsylvania Crimes Code: second degree murder, § 2502(b) and third degree murder, § 2502(c); kidnapping, § 2901;

[1] As a result of its findings, the Third Circuit did not reach other penalty phase issues reached by the district court in this matter.

[2] A criminal homicide constitutes murder in the first degree when it is committed by an intentional killing. Intentional killing is defined as willful, deliberate, and premeditated.

aggravated assault, § 2702; unlawful restraint, § 2901; false imprisonment § 2903; possession of an instrument of crime, § 907; and criminal conspiracy to commit the principal offenses, § 903, with his co-conspirator, Frank Chester. The offenses charged arose out of the slashing death of Anthony Milano on December 15, 1987.

In this case, the Pennsylvania corrections official who was the respondent in the district court (and who will be referred to hereafter as the Commonwealth) seeks review of the order of the Third Circuit, which affirmed the district court's order, which granted relief to Laird, specifically that Laird's conviction for first-degree murder be vacated and set aside, and permitting the Commonwealth to grant petitioner a new trial on the first-degree murder charge, a sentencing on that charge if convicted, and/or sentencing on the convictions as to which the trial court did not initially impose sentence. Below, we summarize the relevant procedural history of this matter in the courts of the Commonwealth and in the district court and in the Third Circuit Court of Appeals.

A. Procedural History in State Court

On December 22, 1988, Criminal Complaints charging first-degree murder for the slashing death of Anthony Milano and other related crimes were filed against Richard Laird and his co-conspirator, Frank Chester.

Trial on those charges began on May 13, 1988 in the Bucks County Court of Common Pleas, and on May 19, 1988, the jury returned a verdict of guilty of First-degree Murder and all other charges against both Laird and his co-defendant, Frank Chester. On May 21, 1988, the jury sentenced both Laird and Chester to death on the first-degree murder charge.

On May 31, 1988, Laird filed post-verdict motions with the trial court. The trial court denied those motions on June 29, 1989. On July 19, 1989, the trial court sentenced Laird to a term of imprisonment of not less than ten (10) and not more

than twenty (20) years on the kidnapping conviction; said sentence to run consecutive to the sentence of death.

On March 20, 1991, the Pennsylvania Supreme Court affirmed the judgment of sentence entered in the Bucks County Court of Common Pleas. The Pennsylvania Supreme Court treated Laird and co-defendant Chester's direct appeals as a joint appeal. *Commonwealth v. Laird*, 526 Pa. 578, 587 A.2d 1367 (1991). (Appendix B). On June 18, 1991, Laird filed a Petition for Writ of Certiorari in the United States Supreme Court, which was denied by Order dated November 12, 1991.

Laird and co-defendant Chester split their appeals for collateral review purposes. After a 6-day PCRA hearing, held on January of 1997, the Honorable Edward G. Biester, Jr., Bucks County Court of Common Pleas denied Laird's PCRA petition on Order dated September 2, 1997. The Pennsylvania Supreme Court also denied Laird PCRA relief in a detailed opinion. *Commonwealth v. Laird*, 726 A.2d 346 (Pa. 1999). (Appendix C).

B. Procedural History in the Federal Habeas Courts

On September 7, 1999, Laird filed a Petition for a Writ of Habeas Corpus to the United States District Court for the Eastern District of Pennsylvania.

On September 5, 2001, Justice Jan E. DuBois, of the United States District Court for the Eastern District of Pennsylvania, granted Richard Laird's Petition for a Writ of Habeas Corpus by ordering that Laird's first-degree murder conviction and death sentence be vacated and set aside. On October 2, 2001 the Commonwealth filed its notice of appeal with the United States Court of Appeals for the Third Circuit. On July 19, 2005, Judges Roth, McKee, and Barry, of the Third Circuit Court of Appeals affirmed the order of the district court as to the accomplice liability issue to vacate and set aside Laird's conviction for first degree murder. This appeal from the Commonwealth of Pennsylvania follows.

STATEMENT OF THE FACTS

A. Crimes for Which Laird was Convicted

On Thursday, December 15, 1987, the victim, Anthony Milano, age twenty-six, was reported missing by his family who had last seen him at his family residence in Bristol Township, leaving the house in his mother's 1976 Chevrolet Nova at approximately 11:15 p.m. on Wednesday, December 14, 1987. N.T. pp. 3-5[3].

On the evening of December 15, 1987, police responded to a call of a "vehicle fire" near Ashby Avenue in Bristol Township, Bucks County. Officer McGuigan observed the victim's 1976 Chevrolet Nova on fire. N.T. pp. 10-14. Officer McGuigan subsequently discovered the dead body of Anthony Milano 20 to 25 yards inside the adjoining wooded area. Officer McGuigan observed a slashing wound on the victim's neck and throat, and multiple bruises and cuts on his face. Officer McGuigan described that most of the victim's neck was gone. N.T. pp. 14-15. A pack of Salem cigarettes was found inside the victim's jacket pocket, and a pack of Kool cigarettes was found under his body. N.T. pp. 65-67.

The Fire Marshall who examined the victim's car testified that the car was heavily burned, and concluded that the fire was intentionally set, originating in the interior of the car. N.T. pp. 50, 55-58.

A post mortem examination by pathologist Dr. Ahmad revealed that the victim had sustained multiple long slashing cuts about the face, throat, neck, and shoulder, resulting in "tremendous" and "excessive" blood loss. N.T. pp. 139, 141-150. Dr. Ahmad testified that the victim's throat had been slashed "too many times to count." Dr. Ahmad opined that the "slashings" were hard enough and deep enough to sever victim's fifth and sixth vertebrae. N.T. pp. 152-54. Dr. Ahmad concluded

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[3] N.T. indicates the Notes of Testimony, and referenced page number of the trial record in this case.